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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1939**

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# No. 33

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JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,

*Petitioner,*

*vs.*

BENNO BARTELS,

*Respondent.*

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## SUPPLEMENTAL BRIEF ON BEHALF OF THE RESPONDENT BENNO BARTELS.

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# INDEX.

## Subject Index.


| | Page |
|---|---|
| Preliminary statement—The Policy of the Nation | 1 |
| Argument I—The "Provisions for the Relief of Debtors" initiated in Chapter VIII of the Bankruptcy Act by the Act of March 3, 1933 and continuing into the Municipal Debt Relief provisions in Sections 81 to 84 of the Bankruptcy Act show that the farmer debtor Section 75, is distinctly different from all others on the subject of filing and dismissal | 6 |
| Provisions relating to filing of debtor-relief proceedings | 7 |
| Provisions relating to dismissal of debtor-relief proceedings | 7 |
| Argument II—An examination of the cases relied upon in the petitioner's brief shows that they do not support the thesis of the petition that the farmer debtor's case should be dismissed | 10 |
| Petitioner's brief, page 2 | 10 |
| Petitioner's brief, page 3 | 11 |
| Petitioner's brief, page 14 | 13 |
| Petitioner's brief, page 15 | 13 |
| Petitioner's brief, page 16 | 14 |
| Argument III—A creditor who participates in proceedings under Section 75 for composition and extension and after the proceedings are closed and an amended petition is filed under Section 75 (s) then objects to the proceedings under Section (a) to (r), is estopped | 17 |
| Argument IV—The decision in *Wright* v. *Vinton*, 300 U. S. 440, does not sustain the petitioner's contention that the proceedings be dismissed | 18 |
| The Fifteen Cases cited in Note 6 of *Wright* v. *Vinton* | 23 |
| Argument V—Some opinions illustrating the legislative purpose of Section 75 | 28 |
| Conclusion | 42 |

## INDEX OF CASES.

### A.


| | Page |
|---|---|
| *Adair* v. *Union Central*, 303 U. S. 350 | 3 |
| *Anderson, In re* 22 Fed. Supp. 928 | 39 |
| *Anderson, In re*, 23 Fed. Supp. 854 | 28 |


### B.


| | |
|---|---|
| *Ballard, In re*, 10 Fed. Supp. 549 | 13 |
| *Baxter* v. *Savings Bank*, 92 F. (2d) 404, C. C. A. 7, 1937 | 10 |
| *Borgelt, In re*, 79 F. (2d) 929 | 11, 19, 23 |
| *Broadway, In re*, 152 Fed. 152 | 18 |
| *Bumpass, Re*, 23 Fed. Supp. 876, 1938 | 33 |
| *Buxton's Estate, In re*, 14 Fed. Supp. 616 | 14, 19, 25 |
| *Byrd, In re*, 15 Fed. Supp. 453 | 19, 26 |


### C.


| | |
|---|---|
| *Campbell* v. *Corporation*, 105 F. (2d) 197, C. C. A. 9, 1939 | 13 |
| *Chilton, In re*, 16 Fed. Supp. 14, 17 | 27 |
| *Coleman, In re*, 93 F. (2d) 1001 | 13, 37 |
| *Commonwealth, In re*, 223 Fed. 667 | 18 |


### D.


| | |
|---|---|
| *Dallas Land Bank* v. *Davis*, 83 F. (2d) 322, C. C. A. 5, 1936 | 24 |
| *Davis, In re*, 16 Fed. Supp. 960 | 19, 27 |
| *Duvall, In re*, 14 Fed. Supp. 799 | 15, 19, 26 |


### F.


| | |
|---|---|
| *First Nat'l Bank* v. *Beach*, 301 U. S. 435, 1937 | 3 |
| *First Nat'l Bank, In re*, 152 Fed. 64 | 18 |


### G.


| | |
|---|---|
| *Gorman, Matter of*, 37 A. B. R. N. S. 740, 1938 | 36 |
| *Gray* v. *Union, etc.*, 105 F. (2d) 275, 1939 | 37 |

## H.

Page

*Helstab* v. *Equitable*, 91 F. (2d) 655, 1937 ..... 12
*Henderson, In re*, 100 F. (2d) 820, 1938 ..... 10
*Hill, In re*, 149 Fed. 73 ..... 18
*Hilliker, In re*, 9 Fed. Supp. 948 ..... 13
*Home, etc.*, v. *Blaisdell*, 290 U. S. 398 ..... 2

## I.

*In re Ballard*, 10 Fed. Supp. 549 ..... 13
*In re Borgelt*, 79 F. (2d) 929, 1935 ..... 11, 19, 23
*In re Broadway*, 152 Fed. 152 ..... 18
*In re Buxton's Estate*, 14 Fed. Supp. 616 ..... 14, 19, 25
*In re Byrd*, 15 Fed. Supp. 453 ..... 19, 26
*In re Chilton*, 16 Fed. Supp. 14, 17 ..... 27
*In re Coleman*, 93 F. (2d) 1001 ..... 13, 37
*In re Commonwealth*, 223 Fed. 667 ..... 18
*In re Davis*, 16 Fed. Supp. 960 ..... 19, 27
*In re Duvall*, 14 Fed. Supp. 799 ..... 15, 19, 26
*In re First Nat'l Bank*, 152 Fed. 64 ..... 18
*In re Gorman*, 37 ABR NS 740, 1938 ..... 36
*In re Henderson*, 100 F. (2d) 820 ..... 10
*In re Hill*, 149 Fed. 73 ..... 18
*In re Hilliker*, 9 Fed. Supp. 948 ..... 13
*In re Klein*, 1 Howard 279 ..... 5
*In re Knapp*, BLS 51851, 1939 ..... 39
*In re McCracken*, BLS 51848 ..... 39
*In re Moser*, 95 F. (2d) 944 ..... 18
*In re New England*, 169 Fed. 586 ..... 18
*In re Paul*, 13 Fed. Supp. 645, 647 ..... 25
*In re Plummer*, 9 Fed. Supp. 923 ..... 17
*In re Price*, 16 Fed. Supp. 836 ..... 27
*In re Reaney*, 25 Fed. Supp. 701, 1938 ..... 32
*In re Reichert*, 13 Fed. Supp. 1, 4, 5 ..... 19, 25
*In re Schaeffer*, 14 Fed. Supp. 807 ..... 14, 19, 26
*In re Siske*, Bankruptcy Law Service, Commerce Clearing House, Paragraph 3931, D. C., North Carolina, 1936 ..... 15
*In re Sterba*, 74 F. (2d) 413 ..... 16
*In re Vater*, 14 Fed. Supp. 631 ..... 14, 26

## K.

Page

*In re Wilkin*, 8 Fed. Supp. 222 ..... 40
*In re Wylie*, 16 Fed. Supp. 193, 194 ..... 15, 19, 27

## J.

*John Hancock* v. *Benno Bartels*, C. C. A. 5 ..... 5
*Johnson* v. *U. S.*, 163 Fed. 30, 32, C. C. A. 1 ..... 4
*Keifer* v. *Reconstruction Finance Corp.*, 306 U. S. 381 ..... 3
*Klein, In re*, 1 Howard 279 ..... 5
*Knapp, In re*, Bankruptcy Law Service, Commerce Clearing House, Paragraph 51851, 1939 ..... 39
*Knotts* v. *First Carolina, etc.*, 86 F. (2d) 551 ..... 24

## L.

*Lowman Case*, 75 F. (2d) 887, 1935 ..... 11, 23
*Louisville* v. *Radford*, 295 U. S. 555 ..... 28

## Mc.

*McCracken, Matter of*, Bankruptcy Law Service, Commerce Clearing House, Paragraph 51848 ..... 39

## M.

*Mason* v. *Dean*, 31 F. (2d) 945 ..... 18
*Massey* v. *Harris*, 94 F. (2d) 526, 1938 ..... 13
*Moser, In re*, 95 F. (2d) 944 ..... 18

## N.

*New England, In re*, 169 Fed. 586 ..... 18
*Noble* v. *Hopewell*, 98 F. (2d) 623, 1938 ..... 35

## P.

*Paul, In re*, 13 Fed. Supp. 645, 647 ..... 25
*Pearce* v. *Coller* (*Collier*), 92 F. (2d) 237 ..... 12
*Plummer, In re*, 9 Fed. Supp. 923 ..... 17
*Price, In re*, 16 Fed. Supp. 836 ..... 27

R.

Page

*Reany, Matter of*, 25 Fed. Supp. 71, 1938 ..... 32
*Reichert, In re*, 13 Fed. Supp. 1, 4, 5 ..... 19, 25
*Rudebech* v. *Sanderson*, 227 Fed. 525 ..... 18

S.

*Siske, In re*, Bankruptcy Law Service, Commerce Clearing House, paragraph 3931, 1936 ..... 15
*Sterba, In re*, 74 F. (2d) 413 ..... 16
*Steverson* v. *Clark*, 86 F. (2d) 330, 1936 ..... 15, 19, 24

T.

*Tennessee Publishing Co.* v. *American National Bank*, 299 U. S. 13, 22 ..... 20

V.

*Vater, In re*, 14 Fed. Supp. 631 ..... 14, 26

W.

*Wilkin, Matter of*, 8 Fed. Supp. 222 ..... 40
*Wilson* v. *Alliance*, 102 F. (2d) 365 ..... 11
*Wright* v. *Union Central*, 304 U. S. 502 ..... 3, 12, 23
*Wright* v. *Vinton*, 300 U. S. 440, 3, 7, 11, 14, 16, 18, 23, 27, 28, 29
*Wylie, In re* 16 Fed. Supp. 193, 194 ..... 15, 19, 27

AUTHORITIES CITED.

General Order ..... 7, 36
General Order 50, Paragraph 4 ..... 10, 41
Senate Judiciary Committee Report 1045, 76th Cong., 1st Ses. ..... 4

STATUTES CITED.

Act of 1898 ..... 12
Act of August 28, 1935 ..... 12
Act of March 3, 1933 ..... 7, 19
Chandler Act, June 22, 1938 ..... 7
Section 74 ..... 11, 16

Page

Section 74 (a) ..... 6, 7
Section 74 (g) ..... 7
Section 75 ..... 4 to 6, 7, 8
Section 75 (a-r) and (s) ..... 3
Section 75 (a-r) ..... 11, 12, 13, 17, 18, 19, 20, 28 to 42
Section 75 (c) ..... 10, 15
Section 75 (e) ..... 36
Section 75 (g) (former) ..... 12
Section 75 (g) (present) ..... 12, 36
Section 75 (i) ..... 6, 8, 24, 26, 27
Section 75 (i) (3) ..... 20
Section 75 (k) (former) ..... 12, 13, 15, 24, 26
Section 75 (k) (present) ..... 12, 13
Section 75 (n) ..... 3
Section 75 (o) ..... 12
Section 75 (q) ..... 9
Section 75 (r) ..... 3, 10, 15, 26
Section 75 (s) ..... 3, 6, 8, 11, 12, 13 to 20, 24 to 27, 28 to 42
Section 75 (s) (3) ..... 20, 29, 34
Section 75 (s) (5) ..... 13
Section 77 ..... 7, 10, 11
Section 77 (a) ..... 7
Section 77 (e) ..... 8
Section 77 B ..... 8, 11
Section 77 B(a) (now Sec. 141) ..... 7
Section 77 B (c) (8) (now Sec. 236) ..... 8
Section 84 ..... 11
Section 84 (a) ..... 7
Section 84 (e) ..... 8

# SUPREME COURT OF THE UNITED STATES
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JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,

*Petitioner,*

*vs.*

BENNO BARTELS,

*Respondent.*

## SUPPLEMENTAL BRIEF ON BEHALF OF THE RESPONDENT BENNO BARTELS.

(All italics in this brief are supplied, unless noted otherwise.)

## PRELIMINARY STATEMENT.

### The Policy of the Nation.

On March 3, 1933, the nation initiated a new policy under the power granted in Article I, Section 8, Clause 4 of the Constitution, "To establish • • • uniform laws on the subject of bankruptcies throughout the United States."

In discussing this new policy, Charles Warren in his book "Bankruptcy in United States History," says in his Foreword:

> "At first, relief was demanded only in the interest of the creditor; later, in the interest only of the debtor; but the more recent bankruptcy laws have been regarded as demanded for the National interest in general."

At page 144 he says:

> "Moreover, it had become generally recognized that Congress should not exercise its power in the interest either of the debtor or of the creditor class alone—and that, in fact, there could be no such division of American citizens, since most of us are in one capacity debtors, and in another capacity creditors. *There is now, therefore, a rather general acceptance of the principle that a bankruptcy law is required in the public interest of the Nation at large and for its welfare, apart from the effect of the law upon the particular individuals on whom it is to operate.* Now the chief interest of the Nation lies in the continuance of a man's business and the conservation of his property for the benefit of creditors and himself, and not in the sale and distribution of his assets among his creditors, or even in his own immediate discharge from his debts. Forced sale of property and stoppage of a business in times of depression constitute loss to the Nation at large, as well as to the individual debtors and creditors."

In *Home, etc.* v. *Blaisdell*, 290 U. S. 398, this Court said in the early days of the present great depression, at page 445:

> "Also important is the fact that mortgagees, as is shown by official reports of which we may take notice, are predominantly corporations, such as insurance companies, banks, and investment and mortgage companies. These, and such individual mortgagees as are small investors, are not seeking homes or the opportunity to engage in farming. Their chief concern is the reasonable protection of their investment security. It does not matter that there are, or may be, individual cases of another aspect. *The legislature was entitled to deal with the general or typical situation. The relief afforded by the statute has regard to the interest of mortgagees as well as to the interest of mortgagors. The legislation seeks to prevent the impending ruin of both by a considerate measure of relief.*"

This Court in four unanimous decisions has recognized and preserved the legislative policy of the Nation, incorporated in Section 75 of the Bankruptcy Act, upon the subject of indebted farmers who are insolvent or unable to meet their debts as they mature. These decisions have been in the following cases:

*Wright* v. *Vinton*, 300 U. S. 440, decided March 29, 1937, holding Section 75 (s) of the Bankruptcy Act (U. S. C. Title 11, Section 203 (s), Act of August 28, 1935) to be constitutional.

*First National Bank* v. *Beach*, 301 U. S. 435, decided May 17, 1937, adjudicating the definition of a "farmer" in Section 75 (r), (U. S. C. Title 11, Section 203 (r), Act of May 15, 1935).

*Adair* v. *Union Central*, 303 U. S. 350, decided February 28, 1938, holding that under Section 75 (a) to (r) and (s) the bankruptcy court is authorized to permit the use of farm proceeds to preserve, cultivate and market a farm crop despite the terms of a mortgage.

*Wright* v. *Union Central*, 304 U. S. 502, decided May 31, 1938, holding (1) that the moratorium provided in Section 75 (s) supersedes and extends any state statutory redemption provisions in mortgage foreclosure by the terms of Section 75 (n) enacted August 28, 1935, and (2) that any property acquired by the farmer debtor during the pendency of his farmer debtor proceedings under Section 75 and before the filing of an amended petition under Section 75 (s) is subject to the jurisdiction of the bankruptcy court.

Very recently this Court in *Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381, said at page 390 (referring to the authority of corporate entities for governmental ends to sue and be sued): "Such a firm practice is partly an indication of the present climate of opinion which has brought governmental immunity from suit into disfavor, partly it reveals *a definite attitude on the part of Congress*

*which should be given hospitable scope."* Note 4 of the opinion, at page 391 cites several decisions of this Court and other authorities and quotes Mr. Justice Holmes on Circuit, in *Johnson* v. *United States,* 163 Fed. 30, 32, C. C. A. 1st, as saying:

> *"The legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed.* The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for courts to say: We see what you are driving at but you have not said it and therefore we shall go on as before."

While many of the lower courts have scrupulously adhered to the policy designed to be followed by Section 75 as to farmer debtors many have not, in the opinion of the legislature, done so. As an example of many similar official expressions from the legislative branch of the government the following extracts are quoted from Report No. 1045 of the Judiciary Committee of the Senate, 76th Congress, 1st Session, dated August 1, 1939:

> "It was the intent of Congress, when it passed Section 75, that the stay should be for 3 years provided the farmer complied with the provisions of the act and paid the rental as fixed by the court and complied with the orders of the court."
>
> • • • • • • •
>
> "The Supreme Court has repeatedly held that, in bankruptcy, mortgaged property could be sold free and clear of encumbrances or lien and all that the mortgagee was entitled to was the proceeds. It has held that the mortgaged property could be sold at either private or public sale. *The object of Section 75 is to save and protect the farmer's home and farm.* Obvi-

ously that cannot be done if the mortgagee says 'I do not care what the value is. I will bid the full amount of the mortgage.' Vengeance and hatred should not be permitted by Congress or by courts when it has for its object the destruction of a home."

• • • • • • •

"Surely a mortgagee should not object to this. He is not entitled to more than the value of the property and cannot get any more under any conditions even if he takes the property, unless he wishes simply to bid for vengeance."

• • • • • • •

"In legislating on this subject it is just as much the duty of Congress and of the courts to consider the unfortunate debtor as it is to consider the unfortunate creditor. Perhaps due to no fault of either the debtor or the creditor the farming venture in which they both had confidence has been dashed upon the rocks. (See *In re Klein*, 1 Howard 279.)

• • • • • • •

"Some of the courts hold that unless the farmer can prove to them that he can pay 'all of his debts' by the end of 3 years that then his petition 'lacks good faith.' One court dismissed 95 cases without giving a single farmer an opportunity to be heard, the judge simply stating that these farmers could 'never pay all of their debts.' The act does not say 'all of their debts,' it says the 'value of the property' is what the farmer will have to pay. We are glad to note that in the *John Hancock Mutual Life Insurance Company* v. *Benno Bartels*, recently decided, the Circuit Court in the Fifth Circuit refused to follow those decisions. That court, in discussing this matter says in part:

" 'The courts have spoken of a lack of "good faith" in invoking section 75 as a cause for dismissing the whole proceeding, and some countenance has been given the idea in a footnote to the opinion in the case

of *Wright* v. *Vinton Bank, supra.* We do not understand it to be a part of the court's opinion. The note mistakenly states that good faith is made a requirement of the initiation of a proceeding under section 75. That requirement appears in section 74 (a) (11 U. S. C. A. sec. 202 (a)). Section 75 nowhere mentions initial "good faith" as a prerequisite to invoking subsection (s), or going through bankruptcy, if rehabilitation under that subsection fails. The good faith of the offer and acceptance is to be inquired into by the court before confirming a composition or extension accepted by the majority of creditors (subsec. (i), 11 U. S. C. A. sec. 203 (i), and that is the only mention of good faith in section 75.'

* * * * * * *

"No one can deny that the agricultural situation is still acute, owing to low prices and crop failures. No one can deny but that agriculture is the basic industry of the Nation. Congressional efforts should not be restricted but should receive liberal interpretation. We feel that this legislation is much needed and highly desirable and for the good of the Nation."

## ARGUMENT.

### I.

**The "Provisions for the Relief of Debtors" initiated in Chapter VIII of the Bankruptcy Act by the Act of March 3, 1933 and continuing into the Municipal Debt Relief provisions in Sections 81 to 84 of the Bankruptcy Act show that the farmer debtor Section 75, is distinctly different from all others on the subject of filing and dismissal.**

The applicable portions of the various acts are here set forth from "Bankruptcy Laws 1938," 75th Congress, 3rd Session, Senate Document No. 225 (except Section 74 which was repealed by the Chandler Act). The remaining Sections 75, 77, 77B and 81 to 84 have not been materially

changed in the respects noted by the Act of June 22, 1938, (the Chandler Act).

**Provisions Relating to the Filing of Debtor-Relief Proceedings.**

At no place does Section 75 require that a petition be filed in good faith while all other debtor sections do so specifically.

Section 74 (a), Act of March 3, 1933. (Individuals): "Upon the filing of such a petition * * * the judge shall enter an order approving it * * * *if satisfied that such petition * * * has been filed in good faith,* or dismissing it."

Section 75 (Farmers): (No such provision.)

Section 77 (a) (Railroads): "Any railroad * * * may file * * * a petition * * * the judge shall enter an order * * * approving it * * * *if satisfied that such petition * * * has been filed in good faith,* or dismissing it * * *"

Section 77B (a), Now Section 141. (Corporations): "Upon the filing of a petition * * * the judge shall enter an order * * * approving the petition * * * *if satisfied that it has been filed in good faith,* or dismissing it * * *"

Section 84 (a) (Municipalities): "Upon the filing of such a petition the judge shall enter an order * * * approving it * * * *if satisfied that such petition * * * has been filed in good faith* or dismissing it, * * *"

**Provisions Relating to the Dismissal of Debtor-Relief Proceedings.**

Each of these Sections further provides for the liquidation of the estate or dismissal of the proceedings if a proper proposal is not made by the debtor. Section 75 for farmer debtors contains no such provision.

Section 74 (g) Act of March 3, 1933. (Individuals): "If * * * the debtor's proposal has not been ac-

cepted * * * or * * * confirmation has been denied * * * the court may appoint a trustee * * * *to liquidate the estate.*"

Section 75 (Farmers): No such provision.

Section 77 (e) (Railroads): "If the judge shall not approve the plan * * * he shall enter an order in which he may either *dismiss the proceedings,* or * * * refer the proceedings back to the Commission * * *"

Section 77B (c) (8) Now Section 236. (Corporations): If a plan be not proposed, confirmed or consummated the judge * * * shall * * * enter an order *dismissing the proceedings* * * *" (or order bankruptcy proceedings).

Section 84 (e) (Municipalities): "* * * the judge * * * shall enter an interlocutory decree confirming the plan if satisfied * * * If not so satisfied, the judge shall enter an order *dismissing the proceeding.*"

While Section 75 (i) provides that the court "shall *confirm the proposal* if satisfied that * * * the offer and its acceptance are in good faith," *no provision of Section 75 requires that a farmer debtor's petition shall be filed in good faith nor does it anywhere provide for a dismissal of the case.* Section 75 (s) contains provisions distinctly different from those above quoted from Sections 74, 77, 77B and 81 to 84.

The applicable portions of Section 75 (s) read as follows:

"Any farmer failing to obtain the acceptance of a majority * * * of all creditors * * * or if he feels himself aggrieved * * * may amend his petition * * * asking to be adjudged a bankrupt * * *

(1) After * * * appraisal * * * the referee *shall issue an order* setting aside * * * exemptions * * * and *shall order that the possession* * * * *of the debtor's property shall remain in the debtor* * * *.

(2) When the conditions set forth in this section have been complied with, *the court shall stay all* * * *

*proceedings* • • • *for three years.* During such three years *the debtor shall be permitted to retain possession* • • •, provided he pays • • • rental • • •

(3) *At the end of three years* • • • the debtor may pay into court the amount of the appraisal • • • and thereupon the court shall • • • turn over full possession and title • • • free of encumbrances to the debtor • • •"

It would seem to be clearly established that there is no provision authorizing a farmer debtor's petition to be dismissed. If for any reason the procedure prescribed by the statute has not been followed, due regard for the principles of equity and the policy of the law would suggest a remand of the case to the conciliation commissioner for proper procedure in accordance with the Act.

The foregoing conclusion seems to be particularly indicated by the usual informality of the proceedings in farmer debtor cases where the farmer debtor often is not represented by counsel. The Act itself in Section 75 (q) reads: "A *conciliation commissioner shall upon request assist any farmer in preparing and filing a petition* under this Section and in all matters subsequent thereto arising under this Section and *farmers shall not be required to be represented by an attorney in any proceeding under this Section.*"

The Record shows that Mr. Bartels was not represented by counsel until all of the proceedings complained of in the petitioner's motion to dismiss had been fully completed. Proceedings under subsections (a) to (r) were disposed of and the amended petition under Section 75 (s) was filed by March 23, 1938. R. 7 to 11. Counsel for the farmer debtor first appears in the record on April 5, 1938. R. 11 to 14. The report of the hearing on December 21, 1937 shows counsel for the petitioner but none for the farmer debtor. R. 15.

II.

**An examination of the cases relied upon in the petitioner's brief shows that they do not support the thesis of the petition that the farmer debtor's case should be dismissed.**

We have carefully read all of the cases mentioned in the Brief for Petitioner, not only those cited but those referred to in the quotations from opinions. We shall endeavor to state very briefly the point or points of each of the cases which indicate its weakness as support for the petitioner.

**Petitioner's Brief, Page 2.**

*Baxter* v. *Savings Bank*, 92 F. (2d) 404 C. C. A. 7, 1937. *The Court found that the petitioner was not a farmer.* Page 136: "The evidence amply sustained the conclusion of the court, that appellant was not a farmer within the meaning of the Act." As it is only a "farmer" as defined in the Act (Section 75 (r)) who may invoke it (Section 75 (c)) the finding that the petitioner was not a farmer effectually disposed of the issue and required a dismissal of the case.

All discussion in the opinion of what the law would be as applied to a case in which the petitioner came within the law is *obiter dicta*, as much so as if the opinion had been advanced in a case invoking Section 77 for Railroads.

It may be noted further that the court *did not dismiss the case* but recommended further proceedings.

*In Re Henderson*, 100 F. (2d) 820 (not "280") C. C. A. 5 1938. Without notice to the farmer debtor the court dismissed the case 74 days after the creditors' meeting. No time had been fixed for the filing of an application for confirmation of a proposal. In view of General Order 50, paragraph (4) directing the fixing of a time "not later than three months" it would seem that the dismissal was premature, to say nothing of the lack of any notice to the farmer debtor. At the foot of the first column on page 821 of the

report of the case the opinion intimates that the farmer debtor should have applied *for an opportunity* to make a new offer.

Judge Hutcheson dissented from the foregoing decision saying that 75 (s) "without exception, limitation or qualification provides: '(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt.' "

*Wilson* v. *Alliance* (said to be not yet officially reported but reported in), 102 F. (2d) 365. C. C. A. 1939. The farmer debtor died after her amended petition had been filed and she had been adjudicated a farmer debtor bankrupt under Section 75 (s). The administratrix of the estate applied for leave to proceed which was denied. The court held the proposal of the deceased was defective and (quoting from page 366 of the opinion) "Furthermore the petition to be adjudged a bankrupt under Section 75 (s) is merely an amendment to the prayer of the petition for a composition and extension under *Section 75 (a) to (r), as to which there is express statutory authority to dismiss because not filed in good faith.*" This is a misstatement of the law as Section 75 nowhere contains any provision for dismissal. The writer of the opinion evidently was thinking of the dismissal provisions of Sections 74, 77, 77B or 84 which have been quoted at pages 7, 8 and 9 of this Brief.

**Petitioner's Brief, Page 3.**

*In re Borgelt*, 79 F. (2d) 929, C. C. A. 7, 1935. This decision held that the farmer debtor had no property right in his farm because the State statutory redemption period had started to run after mortgage foreclosure. The decision is expressly based upon the *Lowmon* decision, 79 F. (2d) 887 C. C. A. 7, 1935, which was reversed

by this Court in *Wright* v. *Vinton*, 300 U. S. 440 (1937) and later overruled in *Wright* v. *Union Central*, 304 U. S. 502 (1938). The decision is also grounded upon the former Section 75 (k) of the Act of March 3, 1933 which prohibited a proposal that would reduce the amount of a secured debt. The present Section 75 (k) enacted August 28, 1935 permits the proposal to be based upon the *value of the security* as distinguished from the amount of the debt. This decision is discussed in this brief at page 23.

*Helstab* v. *Equitable*, 91 F. (2d) 655, C. C. A. 10, 1937. This case also was based upon the interpretation that after the State statutory redemption period following foreclosure had started to run the farmer debtor had no property right and that Section 75 did not extend the redemption period. This interpretation was overruled in *Wright* v. *Union Central*, 304 U. S. 502. It is important to note that the court *refused to dismiss the case* but suggested that the mortgagees follow the mandatory procedure of Section 75 (o) The opinion is also based upon the former Section 75 (g) of the Act of March 3, 1933 which required the proposal for composition to be accompanied by a full cash deposit. This requirement was deleted in the present Section 75 (g) enacted August 28, 1935. The court also found that *the farmer debtor had never made or submitted any proposal.*

*Pearce* v. *Coller* (*Collier*), 92 F. (2d) 237, C. C. A. 3, 1937. The farmer filed a voluntary petition in *regular bankruptcy* under the Act of 1898. A trustee was appointed who took title to the property. *Without ever filing any petition under Section 75 (a) to (r)* seeking composition or extension the farmer filed an amended petition under Section 75 (s). The court held that the farmer had transferred his title to the trustee and therefore had none to be subject to Section 75.

It further held there was no authority under the Act of August 28, 1935 for transferring the case upon the written

application of the farmer debtor from regular bankruptcy into Section 75. This holding was in violation of the last sentence of Section 75 (s) (5) which reads: "Any farmer who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court • • •."

*In re Coleman,* 93 F. (2d) 1001, C. C. A. 6, 1938. This case also arose out of the riginal Section 75 (k) requiring a proposal to be in the full amount of the secured debt which was repealed by the present Section 75 (k) basing the proposal upon the *value of the security.* Act of August 28, 1935. It is also to be noted that *the case was not dismissed.* The farmer was permitted to continue in the proceedings under Section 75 (s) upon paying taxes and interest *despite his defective offer.*

*Massey* v. *Harris,* 94 F. (2d) 526, C. C. A. 4, 1938. After repeated continuances granted by the conciliation commissioner in an attempt to effect a settlement under Section 75 (a) to (r) the farmer debtor filed her amended petition under Section 75 (s). The court held the proposals were not sufficient and dismissed the *amended petition,* but *did not dismiss the case.*

**Petitioner's Brief, Page 14.**

*In re Hilliker,* 9 Fed. Sup. 948, District Court, California, 1935. This district court held the *petitioner was not a "farmer"* but a dentist, which finding effectually disposed of the case leaving the court's observations upon the other questions as mere *obiter dicta.* This case was also filed while the original Section 75 (k) required a proposal to be in the full amount of the secured debt.

**Petitioner's Brief, Page 15.**

*In re Ballard,* 10 Fed. Sup. 549, District Court, California, 1935. The farmer debtor's amended petition under Section 75 (s) was denied because he had *never submitted any pro-*

*posal* under Section 75 (a) to (r). The farmer was left free to go back and comply with the provisions of Section 75 (a) to (r) by attempting to obtain a settlement. *The case was not dismissed.* The court remarked that the farmer apparently misunderstood the law and said:

> "• • • the farmer must either have actually proposed a plan which the creditors have not accepted or he must feel aggrieved by one they have accepted. The petition does not disclose such facts. The petition must accordingly be denied *without prejudice.*"

*In re Vater;* 14 Fed. Sup. 633, District Court, Kentucky, 1936. The proposal was for an extension of 15 years, the farmers to pay taxes, make repairs, and pay semiannually out of farm income. Not obtaining an acceptance the farmer debtors filed an amended petition. The court characterized their proposal as "preposterous" and dismissed the whole case without permitting a revised proposal to be made in accordance with the court's conception. This case is discussed later in this brief at page 26.

*In re Schaeffer,* 14 Fed. Supp. 807, District Court, Maryland, 1936. The farmer debtor's proposal was conditional upon a favorable decision in a pending State case. His amended petition was dismissed, the court holding that it was not sufficient. *The case was not dismissed.* This case is again discussed at page 26 of this brief.

**Petitioner's Brief, Page 16.**

*Steverson* v. *Clark,* 86 F. (2d) 330, C. C. A. 4, 1936. This decision stated that the court had held Section 75 (s) to be void. This case is quoted in *Wright* v. *Vinton,* 300 U. S. 440, as having held Section 75 (s) unconstitutional. Under these circumstances the court could do nothing but dismiss the proceedings. This case is discussed again in this brief at page 24.

*In re Buxton's Estate,* 14 Fed. Supp. 616, District Court, Illinois, 1936. This decision held Section 75 (s) to be uncon-

stitutional and this Court so stated in *Wright* v. *Vinton*, 300 U. S. 440. It also held (despite the provision of Section 75 (r) that the personal representative of a deceased farmer is a "farmer" and therefore entitled to invoke the Act) that such personal representative could not proceed under it. Like other similar decisions the opinion went on to discuss what was not before it after it found that it had no jurisdiction. By its own decision it had no jurisdiction because (1) it held the Act to be void and (2) it held that the administrator could not proceed. This case is later discussed again in this brief at page 25.

*In re Duvall*, 14 Fed. Supp. 799, District Court, Virginia, 1935. This case under the original Section 75 (k) requiring a proposal in the full amount of the secured debt *merely denied confirmation of the proposal. The case was not dismissed.* This decision is later discussed at page 26.

*In re Wylie*, 16 Fed. Supp. 193, District Court, South Carolina, 1936. The proposal was that the farmer debtor should remain in possession of his farm and pay to his creditors any profit he could make. The court held the proposal was not acceptable and *continued the case for a new proposal which was not forthcoming*, whereupon the proceedings were dismissed. This case is later referred to, page 27 of this brief.

*In re Siske*, Bankruptcy Law Service, Commerce Clearing House, paragraph 3931, District Court, North Carolina, 1936. This decision held that the following facts proved fraud and bad faith in the farmer debtor in filing his petition under Section 75. 1. The mortgage installments were delinquent for 4½ years. 2. Taxes were unpaid for 7 years. 3. No fire insurance was carried. 4. There had been no effort to pay the debts scheduled in the petition. 5. The property had not been kept in repair.

In view of the provision of Section 75 (c) that "• • • a petition may be filed by *any* farmer stating that the farmer is *insolvent or unable to meet his debts* as they mature • • •"

it would seem that the reasoning of this decision would *equally disbar any petitioner from filing a voluntary bankruptcy.* The qualifications specified in the Act would, by this decision, disqualify him from invoking it!

*In re Sterba,* 74 F. (2d) 413, C. C. A. 7, 1935. This case involved *Section 74 and not Section 75.* The district court refused to vacate a restraining order prohibiting foreclosure against the assets of the petitioner. The Circuit Court held Section 74 to be constitutional and sustained the district court. The court aptly said that "* * * success under this Act will not be assured unless the court recognizes that its duties are primarily administrative * * *. It must originate, if necessary, and *in many instances use all the forces at its command to bring about cooperation of conflicting interests.*"

We have now completed an examination of every case relied upon by the petitioner (except *Wright* v. *Vinton,* which will be discussed later in this Brief at page 18) and we cannot conclude that they sustain such a drastic measure as the dismissal of an entire case merely because, after proceedings for composition and extension have progressed into Section 75 (s) a creditor *then* suggests that a proper proposal was not made. The remedy would seem to be to ask for a reopening of the composition and extension proceeding if they were not satisfactory to the creditor.

It would seem that the essence of the petitioner's argument, and of all other such objecting creditors (upon whose procedure the present objection is based for they follow a common pattern) is that because a farmer debtor invokes Section 75 he is therefore acting in bad faith! With such an attitude we believe **the national interest and a due regard for expressed legislative policy require disagreement.**

In fact the Record in this case shows little difference between the farmer debtor, Mr. Bartels, and the petitioner, John Hancock Mutual Life Insurance Company. At Record 4 the report of the conciliation commissioner shows that

the farmer debtor proposed to pay $700 to the petitioner at once. ($250 proceeds from personalty and $450 from city lots. R. 47, top of page.) He proposed to pay up the entire delinquencies within three years. The other creditors present agreed to an extension. *The only bar to a settlement* under Section 75 (a) to (r) *was the petitioner,* John Hancook Mutual Life Insurance Company, which stated that it would agree to wait on its principal if *all* delinquencies were paid. R. 4. Upon *this small difference* the petitioner seeks the dismissal of the entire proceeding. This would defeat the purpose of Section 75 which the farmer debtor has invoked.

## III

**A creditor who participates in proceedings under Section 75 for composition and extension and after the proceedings are closed and an amended petition is filed under Section 75 (s) then objects to the proceedings under Section (a) to (r), is estopped.**

In the present case the petitioner participated in the composition and extension proceedings before the conciliation commissioner. When those proceedings failed (solely because of the petitioner's refusal to accept the proposal) and the farmer debtor amended his petition, following the procedure laid down in Section 75 (s), the petitioner for the first time questioned the regularity and sufficiency of the proceedings in which it had participated without objection. It would seem to have been estopped.

In *In re Plummer,* 9 Fed. Supp. 923, the secured creditor participated in the proceedings under Section 75 (a) to (r) as here and, after an amended petition was filed, raised objections. The Court said: "A creditor may not participate in the administration of a bankrupt estate until he considers it to his disadvantage and then challenge the proceedings. The creditor must select his course, and, when

selected, may not change. He must also act promptly. The creditor is therefore estopped from pressing its petition."

The court cited in support of its holding: *In Re Commonwealth*, 223 Fed. 667; *In Re First National Bank*, 152 Fed. 64; *In Re Broadway*, 152 Fed. 152; *In Re Hill*, 159 Fed. 73; *Rudebeck* v. *Sanderson*, 227 Fed. 525; *Mason* v. *Dean*, 31 F. (2d) 945; *In Re New England*, 169 Fed. 586.

*In Re Moser*, 95 F. (2d) 944, C. C. A. 9, 1938, held likewise.

To the same effect was held in *Campbell* v. *Corporation*, 105 F. (2d) 197, C. C. A. 9, 1939, where a creditor verbally assured a farmer debtor that terms of payment in a written contract making time of the essence need not be strictly observed. When the creditor objected to farmer debtor proceedings under Section 75 the court held him to be estopped.

## IV

**The decision in Wright v. Vinton, 300 U. S. 440, does not sustain the petitioner's contention that the proceedings be dismissed.**

Following the holding by the court in *Wright* v. *Vinton*, 300 U. S. 440, that Section 75 (s) is constitutional objecting creditors in every circuit avidly seized upon Note 6 at page 462 of the opinion as warranting dismissal of farmer debtor proceedings. We cannot agree that Note 6 is to be so construed. The court was adjudicating Section 75 (s) and not Section 75 (a) to (r).

In discussing paragraph (3) of Section 75 (s) the opinion at page 462 says:

> "Paragraph 3 authorizes the court to have the property sold if 'at any time' the debtor should fail to comply with orders of the court issued under its power to require interim payments on principal, or otherwise in the course of its 'supervision and control' of his possession. Paragraph 3 also provides that 'if • • •

the debtor at any time * * * is unable to refinance himself within three years,' the court may close the proceedings by selling the property. This clause must be interpreted as meaning that the court may terminate the stay if after a reasonable time it becomes evident that there is no reasonable hope that the debtor can rehabilitate himself within the three year period."

Then Note 6 is inserted which reads as follows:

"This construction is in harmony with the requirement of good faith in the initiation of proceedings under Section 75. Relief under Section 75 (s) may be obtained only by one who has made a bona fide attempt, and has failed, to effect a composition under Section 75 (a) to (r). The offer of composition must be in good faith [March 3, 1933, Section 75 (c), (i), 47 Stat. at L. 1471, 1472, Chap. 204, 11 U. S. C. A. Section 203], and if the debtor is beyond all reasonable hope of financial rehabilitation, and the proceedings under Section 75 cannot be expected to have any effect beyond postponing inevitable liquidation, the proceedings will be halted at the outset. *The practical administration of Section 75 in the lower courts* already affords ample evidence of *the substantial protection afforded the creditor* by this requirement of good faith in the initiation of proceedings under subsections (a) to (r). See Re Borgelt (C. C. A. 7th) 79 F. (2d) 929, 30, Am. Bankr. Rep. (N. S.) 298; Steverson *v.* Clark (C. C. A. 4th,), 86 F. (2d) 330; Knotts *v.* First Carolinas Joint Stock Land Bank (C. C. A. 4th), 86 F. (2d) 551; Re Reichert (D. C.), 13 F. Supp. 1, 4, 5; Re Paul (D. C.), 13 F. Supp. 645, 647; Re Buxton (D. C.), 14 F. Supp. 616, 30 Am. Bankr. Rep. (N. S.), 663; Re Vater (D. C.), 14 F. Supp. 631; Re Schaeffer (D. C.), 14 F. Supp., 807; Re Duvall (D. C.), 14 F. Supp. 799; Re Byrd (D. C.), 15 F. Supp. 453; Re Wylie (D. C.), 16 F. Supp. 193, 194; Re Price (D. C.), 16 F. Supp. 836, 837. Compare Re Chilton (D. C.), 16 F. Supp. 14, 17; Re Davis (D. C.), 16 F. Supp. 960. It must be assumed that the situation

of the present debtor was not beyond all reasonable hope of rehabilitation, else he could not have qualified to file his petition at the outset. Compare Tennessee Pub. Co. *v.* American Nat. Bank, 299 U. S. 18, 22, ante, 13, 15, 57, S. Ct. 85, 32 Am. Bankr. Rep. (N. S.) 180."

This Note 6 was a parenthetical suggestion that such interpretation of paragraph (3) of subsection (s) is not out of harmony with the administration by many lower courts of proceedings under the preceding composition provision in subsections (a) to (r). Again it should be noted that the Supreme Court was adjudicating subsection (s) and not subsections (a) to (r).

The first three sentences of Note 6 are based upon the first sentence of subsection (s): "Any farmer failing to obtain the acceptance of a * * * proposal, or if he feels aggrieved by a composition * * * may amend his petition." Most assuredly there must have been made a proposal which was rejected or accepted and if accepted has aggrieved the farmer debtor before subsection (s) may be invoked. Subsection (i) in clause (3) makes confirmation of the proposal dependent upon a finding that "the *offer* and its *acceptance* are in good faith." Lack of such confirmation will *halt* the proceedings *at the outset.* No one would contend that "if the debtor is beyond *all reasonable hope* of financial rehabilitation, and the proceedings under Section 75 cannot be *expected* to have *any effect* beyond postponing *inevitable* liquidation," the proceedings would be permitted to remain in the bankruptcy court *without further action.*

Note 6 then continues by saying that "The *practical administration* of Section 75 in the lower courts already affords *ample evidence* of the *substantial* protection afforded the creditor by this requirement * * *". *The opinion was not approving the action of the lower courts* as none of the cases cited in the note was before the court, and

*some of them were overruled by the decision which referred to them.* The opinion was showing that the secured creditors had nothing to complain of in the practical administration of the provisions preceding subsection (s). It might *strongly disapprove of the actions of the courts in the cases cited,* and might even overrule them in a proper case before it (and it did *overrule four of them*) but still it might use them as examples to *point out to the secured creditors that they had nothing to complain of by the actions of such courts.*

Following the citation of the 15 cases the court further remarked in Note 6 that "It must be assumed that the situation of the present debtor (Wright) was not beyond all reasonable hope of rehabilitation, else he could not have qualified to file his petition at the outset." A look at the situation of farmer debtor Wright which the court was discussing and the arguments based upon the debtor's situation further discloses this Court's careful regard for the legislative purpose back of Section 75 for the relief of farmer debtors.

The following information concerning Wright's situation is taken from the Transcript of the Record filed in that case, *Wright* v. *Vinton,* 300 U. S. 440. The farmer debtor had been an invalid from heart disease for three years. His real estate mortgage was $5950 and his total debts were $6559. His real estate was valued at $2500, and his farm animals at $173. He had vehicles and implements valued at $57. His total assets were $2882. This shows *Mr. Wright's secured debt to have been between two and three times the value of the security* and that he had little equipment to farm with.

> His proposal was that he "suggests and proposes that he be granted a period of 12 months to pay off his indebtedness"; that he was "willing to consider a shorter period." He "suggests that a definite effort be made to interest buyers in the purchase of the box-

wood on his premises. Said debtor has been informed that this boxwood *once* had a fair market value ranging between $1000 and $1200. He is not informed as to its present market value, but he is making an effort to ascertain this. While its value has certainly diminished substantially, said Debtor thinks that it is yet sufficiently valuable to enable him to pay up all overdue interest, taxes, insurance premiums, if any are overdue, to provide for any insurance premiums to accrue, to provide for the payment of interest for, say, a year in advance, and to provide for taxes for such a period.

Thus the investment would be made a live investment for the first lien creditor during the period indicated. The said Debtor especially asks the co-operation of his creditors and in particular of the first lien creditor toward securing a market for this boxwood, and toward the application of the proceeds from the sale thereof, as above indicated.

Said debtor would further set forth that there is now pending in the Congress of the United States a bill known as the Frazier-Lemke Refinancing Bill, which provides for loans up to the full value of farming lands based on existing appraisements, and further provides for an interest rate of only 1½% a year, and for repayment of the principal on the amortized plan at only 1½% per year, making the total annual charge on account of principal and interest of 3%, or, for illustration, of only $90 a year on a loan of $3,000.

This Refinancing Bill has not yet become a law. Said debtor would not pretend to say that it will become a law. He does know, however, that there is a very strong sentiment in Congress for this Bill and that there is a reasonable probability that it will be enacted into law. He asks the extension aforesaid both because the boxwood may be turned into cash in the near future and because said Refinancing Bill may become a law in the near future.

It is the purpose of the said debtor to make an active effort immediately to sell the boxwood if the creditors shall agree upon this plan, and not delay by reason of any extension of a year that may be granted him. To

this he pledges himself and asks the co-operation of his creditors."

*It would be difficult to find, or compose, a proposal more indefinite or less feasible than that of Mr. Wright.*

In its brief filed in the Wright case the respondent referred to the situation of Mr. Wright by saying: "should the constitutionality of this legislation be upheld, a further order will have to be entered staying foreclosure proceedings for a period of three years, and this will be done in spite of the fact that *the bankruptcy schedule shows no possible hope of solvency and contains no possible basis of a financial rehabilitation as is claimed as the great objective of this Act.*" (Italics from the original.) The foregoing is the background of the statement: "It must be assumed," etc., quoted above from this Court's decision.

*The Fifteen Cases Cited in Note 6 of Wright v. Vinton, 300 U. S. 440.*

Each of the cases cited in Note 6 will be examined here. There are 15 of them. It can not be said that they are authority for anything except exactly what this Court said it cited them for—that is to show that the creditors had no cause for complaint in the manner of the treatment accorded them under Section 75.

1. *In re Borgelt*, 79 F. (2d) 929, C. C. A. 7, 1935. For two reasons the *Borgelt* case has no present authority. (1) It adjudicated the original subsection (k) which has been repealed and superseded. (2) It followed the previous *Lowmon* decision. The *Lowmon* case, and likewise the *Borgelt* case which followed it, were both overruled by the very *Wright* v. *Vinton* decision which cited it in Note 6 and later by *Wright* v. *Union Central*, 304 U. S. 502. However, the mortgage holders continue to push the *Borgelt*

decision upon the courts as authority. This decision is discussed elsewhere in this brief at page 11.

2. *Dallas Land Bank* v. *Davis*, 83 F. (2d) 322, 323, C. C. A. 5, 1936. No facts are given. The opinion merely makes the negative statement that the District Judge "found on sufficient evidence that at that stage of the proceedings there was no such showing of inability to finance the debt with the assets involved as would justify the court *in refusing to take jurisdiction.*" *The proceedings were not dismissed.* The Supreme Court noted this case as one holding subsection (s) to be constitutional.

3. *Steverson* v. *Clark*, 86 F. (2d) 330, C. C. A. 4, 1936. This case also held subsection (s) unconstitutional. No facts are given in the opinion except that an amended petition under subsection (s) had been dismissed. "The judge below approved findings by the conciliation commissioner to the effect that an offer of composition and extension had not been made in good faith by the bankrupt, and he accordingly refused an adjudication of bankruptcy and dismissed the proceedings on that ground." That holding was correct. The offer not being made in good faith subsection (i) required its rejection. As a second ground of its decision, the court said: "*In addition to this we have recently held that the second Frazier-Lemke Act is void.* * * *" *This Court's opinion also noted this case as having held subsection (s) to be unconstitutional and overruled it.* This case is elsewhere discussed in this brief at page 14.

4. *Knotts* v. *First Carolinas Land Bank*, 86 F. (2d) 551, C. C. A. 4, 1935. This case also arose out of the old subsection (k) which has been repealed and superseded, and it also held subsection (s) unconstitutional. The farmer debtor's amended petition under subsection (s) had been rejected and his proceedings dismissed because the court

held that the proposal had not been made in good faith. The appellate court said: "Certain it is that *any offer of composition or extension must amount to naught unless accepted by the appellee;* and it clearly appears that the appellee will accept no such offer." This conclusion is clearly erroneous. It is judicial legislation in attempting to repeal Section 75 by allowing a creditor to veto the farmer debtor's right to invoke the provisions of Section 75. This decision is not aided by the fact that the case arose when subsection (k) required the proposal to be not less than the full amount of the secured debts with interest. The opinion continued: "In addition to this the appellee in its petition below challenged the constitutionality of the second Frazier-Lemke Act under which adjudication was sought by appellant; * * * *we cannot ignore our recent holding that this act is void* * * *." What this decision lacks in juristic standing is offset by its "ample evidence of the substantial protection afforded to the creditor." This Court's opinion also noted this case as having held subsection (s) to be unconstitutional.

5. *In re Reichert,* 13 Fed. Supp. 1, 4, 5, District Court, Kentucky, 1936. The court merely said on this subject: "Under this section the composition or extension proposal must have been made in *good faith,*" a statement fully justified by subsection (i) which makes it a condition precedent to confirmation.

6. *In re Paul,* 13 Fed. Supp. 645, 647, District Court, Idaho, 1936. The court *refused to dismiss* a proceeding under subsection (s). *Obiter dicta* the court said it would seem that the Act did not intend that the farmer debtor should keep his land for ulterior purposes when he does not intend to or cannot rehabilitate himself.

7. *In re Buxton's Estate,* 14 Fed. Supp. 616, District Court, Illinois, 1936. The court erroneously held, in spite

of the specific provisions in Section 75 (r) that the administrator could not proceed under Section 75. This Court's opinion noted this case also as having held subsection (s) invalid and overruled it. This case is also discussed in this brief at page 14.

8. *In re Vater,* 14 Fed. Supp. 631, District Court, Kentucky, 1936. The proposal was for an extension of 15 years during which the debtor would pay taxes, keep the property in repair, and pay semi-annually as much as the income justified. The court said "This proposal obviously amounts to nothing more than an offer by the debtors to pay the creditors if and when they are financially able." The court could not confirm such an offer as subsection (i) prohibits it, but the court was not warranted in dismissing the entire proceedings. This case is discussed elsewhere in this brief at page 14.

9. *In re Schaeffer,* 14 Fed. Supp. 807, District Court of Maryland, 1936. The debtor had litigation pending in the State court involving the title to the security. The proposal stated that it was subject to a favorable decision in the State court and that "the only proposal he can make to his creditors is subject to the conditions above and that said proposal cannot be made absolute unless there has been a decision by the Circuit Court of Montgomery County." This offer could not be confirmed under subsection (i). This decision is discussed at page 14 of this brief.

10. *In re Duvall,* 14 Fed. Supp. 799, District Court, West Virginia, 1935. This case was another one based upon the old subsection (k) which has been repealed. The offer as made could not pass subsection (i). This case is discussed elsewhere in this brief at page 15.

11. *In re Byrd,* 15 Fed. Supp. 453, District Court of Maryland, 1936. *The debtor had abandoned his farm and moved*

*to the city and the court held that he "may be said to be only colorably a farmer."* This in itself required the petition to be dismissed.

12. *In re Wylie,* 16 Fed. Supp. 193, 194, District Court, South Carolina, 1936. The proposal was that "in the event he could make any profit out of his farming operations that same should be distributed equitably to his creditors." The court properly held it was not in good faith as it did not comply with subsection (i). This case has previously been discussed in this brief at page 15.

13. *In re Price,* 16 Fed. Supp. 836, 837, District Court, Louisiana, 1936. The court indicated that the debtor had never submitted any proposal whatever and a motion to dismiss would be entertained. It held however that a foreclosure sale conducted during the pendency of the proceedings was void and that the sheriff's deed should be cancelled.

14. *In re Chilton,* 16 Fed. Supp. 14, 17, District Court, Colorado, 1936. In holding subsection (s) to be constitutional the court merely remarked that "good faith is a condition precedent to the enjoyment of most, if not all, of the benefits of Section 75."

15. *In re Davis,* 16 Fed. Supp. 960, District Court, Texas, 1936. The case had progressed into subsection (s) and the statutory three year stay had been ordered. The proceedings were dismissed pursuant to paragraph (3) of subsection (s), and in doing so, the judge said that he made his holding *because of apprehension that the Supreme Court would hold the law unconstitutional unless there was an "equity" in the security.* This apprehension of the District Court was removed by this Court in *Wright* v. *Vinton,* 300 U. S. 440, where the secured debts were more than two times greater than the value of the security.

These are the fifteen cases which were cited by this Court *as ample evidence that the creditors had been substantially protected.* They were cited for no other purpose than to illustrate the practical administration of Section 75 under which the creditors had no right to complain. *This Court did not approve them.*

## V

### Some Opinions Illustrating the Legislative Purpose of Section 75.

A few opinions will here be quoted which discuss the procedure to be followed in the administration of Section 75.

*In re Anderson,* 23 Fed. Sup. 854, District Court, Illinois, 1938. Judge Wham who has been a Federal judge for many years and is often called to sit upon the bench of the Seventh Circuit of the Circuit Court of Appeals and who first pointed out the distinction in the famous "Five Rights" in *Louisville* v. *Radford,* 295 U. S. 555, which this Court observed in *Wright* v. *Vinton,* 300 U. S. 440, discussed the procedure to be followed in Section 75 and the purpose of the law as follows:

> "Petitioner insists that it is now apparent that there is no reasonable hope that debtor will be unable to rehabilitate himself financially within the three-year statutory period, that to continue the proceeding cannot reasonably be expected to have any effect beyond postponing inevitable liquidation, and, in view of these facts, that it is the duty of the court, now, under the terms of the Act (paragraph 3, subsection (s), section 75 of the Bankruptcy Act), when properly construed (Wright *v.* Mountain Trust Bank, 300 U. S. 440 at 461-462), to appoint a trustee and order the farm sold. Emphasis is laid on the fact, which is apparent, that the debtor has no equity in the land. It is urged that the evidence adequately shows that he cannot reasonably expect to raise enough money on the land, or otherwise, to pay

in full his debts, either secured or unsecured, during the three years allowed by the statute. This seems to be true.

The foregoing contention raises a nice point that may well be considered determinative here. Under paragraph 3 and under the decision of the Supreme Court in Wright *v.* Mountain Trust Bank, supra, if it appears from valid evidence at any time after adjudication that 'the debtor is beyond all reasonable hope of financial rehabilitation' (Wright *v.* Mountain Trust Bank, supra, Note 6, at page 461, 462) the court must halt the proceedings. In the language of the decision,

> "Paragraph 3 also provides that 'if * * * the debtor at any time * * * is unable to refinance himself within three years,' the court may close the proceedings by selling the property. This clause must be interpreted as meaning that the court may terminate the stay if after a reasonable time it becomes evident that there is no reasonable hope that the debtor can rehabilitate himself within the three-year period."

But, for the farmer debtor to rehabilitate himself financially or refinance himself within the meaning of the provisions of subsection (s) of section 75, is it necessary that he place himself in position to pay in full all his creditors, secured or unsecured, or both? Or, is it only necessary that the debtor shall be able, during the statutory period of the moratorium, to pay a fair rental upon the property which he retains under subsection (s), both real and personal, with the exception of his unencumbered exemptions, and within such period put himself in position to pay for said property at its appraised, or, if reappraised, at its reappraised value? A careful reading of subsection (s) of section 75 in the light of the entire section shows, I think, that the latter meaning was intended.

It must not be forgotten that we are dealing with a bankruptcy law that has for its purpose the salvaging of farmers who are insolvent and unable to pay

their debts in full. In bankruptcy it has never been supposed that the ordinary bankrupt would be able to pay any of his creditors in full, except those who held ample security. No more is it to be expected under subsection (s). In so far as the bankrupt farmer is unable to pay his debts in full he is entitled to a discharge therefrom (see paragraph 3) as in ordinary bankruptcy even though he succeeds in refinancing himself under the terms of the subsection (s). Under subsection (s) the only essential requirements of the farmer, aside from complying with procedural conditions, are that he shall act in good faith and that he shall, during the period of the moratorium, pay into court the reasonable and customary rental value of the property retained by him and at the end of three years, or prior thereto, pay into court the appraised or reappraised value of the property which he retains, with due allowance at all times for his lawful unencumbered exemptions.

It is true that the court, in its discretion, under the provisions of paragraph 2 of subsection (s), for the protection of creditors, may require the farmer to pay into court for the benefit of creditors definite sums, fixed by the court, in addition to rentals. But such requirement must not be inconsistent with 'debtor's ability to pay, with a view to his financial rehabilitation.' His failure to comply with such reasonable order of court could justify the appointment of a trustee and the sale of the property under paragraph 3 as being a failure to comply with an order of court, but not on the theory that he is unable to refinance himself. This situation is not presented here.

It is also true that Congress, to insure the constitutionality of the law, has provided therein that a secured creditor, if not satisfied to accept the appraised or reappraised value of his security, may have a public sale of the property upon which he has his lien and buy it in at the sale, subject to the farmer's right of redemption, within ninety days, even though the farmer has succeeded in raising enough money to pay into court for the benefit of such secured creditor the appraised

or reappraised value of the encumbered property. Pursuing this undoubted right, the secured creditor may deprive the farmer of the intended ultimate benefit of the provisions of the Act which is the saving of his farm. Yet I think it was in the mind of Congress that the ordinary secured creditor would usually be willing to accept, in lieu of his security, its fair cash value as established by a fair appraisal; that the farmer to refinance himself within the meaning of the Act should be compelled to refinance not his full indebtedness but only the appraised value of the encumbered property as well as the unencumbered property retained by him; that he should not be compelled, in any case, to refinance the entire secured indebtedness, if such indebtedness exceeds the value of its security except to the extent that he might have other property or assets available for that purpose. Otherwise, judging from observation and experience, section 75, subsection (s), intended to meet a great financial crisis among the farmers, can be helpful in comparatively few cases.

It is generally known that, after the slump in farm values, large numbers of farmers with supposedly substantial equities in their mortgaged farms awoke to find their farms mortgaged far beyond their value though there had been an ample margin of safety when the encumbrances were placed thereon. Subsections (a) to (r) of section 75 were enacted to relieve against such situations, and, if possible, to enable the honest but financially embarrased farmer and his creditors to adapt themselves by agreement, under the supervision of the court, to the actual conditions caused by the radically lowered values so that the farmer might save his farm and necessary equipment and at the same time the secured creditors be protected to the full value of their security and the debtor's ability to pay and the unsecured creditors to the full value of all unencumbered property over and above the debtor's exemptions. Subsection (s) was enacted with a view to the accomplishment of approximately the same result through a bankruptcy proceeding in cases in which the farmer, acting in good faith, found it impossible to reach a fair settle-

ment with his creditors by way of composition or extension under subsections (a) to (r).

If I am correct in my interpretation of the Act, then to justify an order of the court terminating the stay, appointing a trustee and directing a sale of the property on the ground that the farmer cannot refinance himself, it must appear from the record and from the evidence that there is no reasonable hope that debtor will be able within the period of the three year moratorium to pay in semi-annual payments a reasonable and customary rental for the unexempt property retained by him and at or prior to the end of such period to pay into court for the benefit of his creditors the appraised or reappraised value of the property retained by him. That he may not be able within such period to pay his debts in full is immaterial.

The evidence here fails to convince me that there is no reasonable hope that the farmer will be unable to finance himself within the meaning of that term as hereinabove stated. If he can, he will have complied with the Act on his part. If the secured creditor then chooses to demand a public sale, the court must order it. Nevertheless, even though, as a result of such sale, the farmer fails to save his farm he will have done all that the Act contemplates he should do to rehabilitate himself. The secured creditor has no right to insist that he do more in order to be entitled to the full period of the statutory stay."

Judge Schoonmaker of the District Court of Pennsylvania in the matter of *Reaney*, 25 Fed. Supp. 71, 1938, said:

"The testimony offered by Anna Aiken Leach sought to show that the debtor could not in three years pay off the indebtedness in full out of his assets, and that the fair rental value of the farm of the debtor was $500.00. On the other hand, the testimony of debtor tended to show that he could raise the appraised value of the property, and that his offer of compromise of approximately $8,000 was more than the appraised

value of his real and personal property, and that he could pay rental of $500.00 per year for the premises. In support of his ability to finance his offer of composition, he presented the affidavit of a person who had agreed to loan him $8,000 to carry out his composition offer.

The whole question for consideration, as we view this case, is whether or not the debtor is proceeding in good faith, and has some reasonable opportunity of rehabilitating himself. There was testimony offered tending to show that the debtor was negligent in his method of operating the farm, that he spent considerable time in taverns rather than in farming. On the other hand, this was distinctly denied by the debtor. As we view it, the offer of debtor to pay his creditors more than the fair market value of all of his property, is an evidence of good faith; and for that reason we ought to accord to him the benefits provided for by the Bankruptcy Act. The fact that the debtor seeks to retain control of his property and yet turn over to his creditors a fair and reasonable value of the property would seem to be evidence of good faith.

We, therefore, shall decline to dismiss the petition as brought in bad faith, and shall accord to the debtor a stay for a three-year period under the provisions of subsection (s) of section 75 of the Bankruptcy Act. The rental we fix at $500.00 per year to be paid in quarterly installments of $125.00; the first installment to be paid in three months from the date of the order; and the remaining installments to be paid quarterly thereafter."

Judge Atwell of the District Court of Texas said in *In re Bumpass*, 23 Fed. Supp. 876, 1938:

"Subsection (2) under subsection (s), 11 U. S. C. A., Section 203, (s) (2), provides that:

'When the conditions set forth in this section have been complied with, the court shall stay all judicial proceedings, in any court for a period of three years. During such three years, the debtor shall be permitted

to retain possession of a.. or any part of his property, provided he pays a reasonable rental semi-annually for that part of the property of which he retains possession.'

There are provisions as to the payments.

Subsection (3) of subsection (s), 11 U. S. C. A., Section 203 (s) (3) provides that:

'At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession [I might interpolate right here, that a high appraisal is against the interest of the debtor, ordinarily, because that is the amount that the debtor must pay at the expiration of three years], including the amount of encumbrances on his exemptions up to the amount of the appraisal, less the amount paid on principal: Provided, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor.'

We cannot read this subsection in any way except as a procedure for the debtor. I think it also might be said it likewise protects the creditors, as intended by this particular statute-writer, and so far the courts have sustained it as now written.

The proviso that, 'upon request in writing by any secured creditor or creditors, the court shall order the property upon which (they) have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold * * * by paying the amount for which (it) was sold, together with 5 per centum per annum interest,' follows.

Then comes this provision:

'If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act [title].'

Three years is what Congress meant the debtor should have, and the court should see that the debtor does not fritter away property on which the creditors have a lien. It will keep its fingers upon the income and arrange for a proper rental. Out of the rental must come the taxes, of course.

This court, has, in cases where there was a manifest inability to farm the lands properly without any apparent ability to pay the rental and where the impossibility of rehabilitation was apparent, held it was inequitable to hold off the creditors the statutory time of three years.

But this bankrupt has a right to have his three years so long as the court finds, as it does, that he has paid his rentals, as well as more on his debts than he was bounden to pay, and his security is in good condition and he has been looking after and farming it in splendid fashion."

In *Noble* v. *Hopwell*, 98 F. (2d) 623, 1938, Circuit Judge Biggs of the Circuit Court of Appeals for the Third Circuit said:

"In our opinion the decision of whether or not an individual is a farmer must turn upon consideration of all of the circumstances. The fact that the appellants' income from farming was almost negligible due to ill health and ill luck is beside the point, and we do not consider the fact that the appellants hoped to rehabilitate themselves by the sale of the farm to some one who would use it as a country estate renders the appellants any less entitled to the benefits of the Act. To lay much emphasis upon their future hopes is to give a false picture of the situation. If the appellants were farmers

in fact, they did not cease to be such because they entertained hope of escape from that existence by the sale of their property to someone who would put their land to much the same use."

In the Matter of *Gorman*, 37 ABR NS 740, 1938, Judge McVicar of the District Court of Pennsylvania said:

"The question for decision now is, under the facts as aforestated, whether the original petition of the farmer should be dismissed or whether he should be allowed to amend the same under section 75 (s). Section 75 (e) provides that the conciliation commissioner shall call a meeting of creditors, stating in the notice that the farmer proposes to offer terms of composition or extension. The conciliation commissioner shall, after hearing the parties in interest, fix a reasonable time within which application for confirmation shall be made. Paragraph (g) of the same section provides that an application for the confirmation of an extension proposal may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, including secured creditors whose claims are affected. General Order or Rule 7 of the Supreme Court provides that the judge shall fix a date and place for a hearing before him upon the application for confirmation. Paragraph (s) of section 75 provides that any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal may amend his petition by asking to be adjudged a bankrupt.

These sections control the disposition of the question now before us. The farmer presented his original petition under Section 75. He made an offer of extension which was not accepted by his creditors. He then asked to be adjudged a bankrupt under paragraph (s) of said section.

Paragraph (i) of Section 75 provides that the court shall confirm the proposal, provided that it is satisfied

that certain facts exist, but it has no application to a case where there was not an acceptance of the proposal. As a matter of fact, the court did not have any hearing under this paragraph because there was no occasion therefor."

In *Gray* v. *Union*, etc., 105 F. (2d) 275, 1939, Judge Hamilton in the opinion of the Circuit Court of Appeals for the Sixth Circuit said at page 277:

"Section 75 was intended to enable insolvent farm debtors or those unable to meet their obligations as they matured *to retain control of their property on turning over to their creditors its fair and reasonable market value in either money or its equivalent.*

In order that this might be done without liquidating the estate at the depth of a nation-wide depression and sacrificing intangible values inherent in the operation of a farm as a going concern and to serve a broader economic purpose, a qualified extension of time was provided for the farmer to pay his debts. Broadly stated, before a farmer is entitled to an extension under the Act, the following must appear, (1) the debtor must have made a proposal to his creditors which includes (a) an equitable and feasible method of liquidation of the claims of the secured creditors and his own financial rehabilitation, (b) his proposal must be for the best interests of himself and creditors, (c) the proposal must be in good faith. (2) *If the farmer fails to obtain acceptance of his good faith proposal by a majority in number and amount of all claims affected, he may have an extension under Section 75 (s) as amended* (11 U. S. C. A., Section 203 (s), *In re Coleman*, D. C., 21 F. Supp. 923, affirmed in 6 Cir., 93 F. 2, 1001.

The law should be construed and applied as to accomplish its purpose with due regard to the constitutional protection of creditors.

The purpose of the Act is not to deprive creditors of their security and give it to debtors but to confer judicial discretion in each case where the facts justify giv-

ing the debtor an equitable opportunity to liquidate his indebtedness in an orderly way, provided this may be done without an essential impairment of the rights of the secured creditor.

The good faith spirit of the Act contemplates that before the debtor is entitled to an extension, he must offer a fair and reasonable method of liquidating his secured indebtedness over the period of extension, which will leave no uncertainties.

The plan should provide for payments, equal to the fair value of the property at the date of adjudication, plus carrying and interest charges, minus the value of exempt property, to creditors in the order of their priority during, or at the end of, the period of extension. Ordinarily, bankruptcy offers of composition contemplate a distribution to the creditors based on the present value of the bankrupt's assets and usually creditors are satisfied if they receive on liquidation a sum equivalent to that.

*The lien debts are worth no more than the value of the property and any deficiency would be a dischargeable debt. It therefore follows that the lien creditor loses nothing so long as his debt is made secure to the extent of the value of the property.* At the end of the extension period, under the provisions of the Act, the creditor may, if he so elects, require that his lien be discharged by a judicial sale in which event he would obtain the benefit of any increase in the value of the lien property due to improved economic conditions. *The good faith of the debtor does not contemplate that he shall offer to pay the entire secured debt within the period of extension nor does it follow that because presently the debt delinquencies of the farmer exceed the fair market value of his assets, that he is deprived of the benefits of the Act, but it must appear from the debtor's offer of composition or extension, that there is a reasonable probability, within the proposed extension period, of either refinancing or liquidating his secured indebtedness, to the extent of the value of his assets in lien, or refinancing or paying to his unsecured*

*creditors the value of the property not in lien;* otherwise, his offer lacks the inherent and essential elements of good faith: *In re Anderson,* D. C., 22 F. Supp. 929."

In denying a creditor's motion to dismiss proceedings under Section 75 (s), Judge Cooper's observations are reported in paragraph 51848 of the Bankruptcy Law Service of the Commerce Clearing House, in the Matter of *McCracken* as follows:

"The plan contained potential salvation for the debtors. In the year preceding their petition they received $2,200 in milk checks. Under the terms of the chattel mortgage, almost this entire sum was paid toward its reduction. The plan submitted by the Conciliation Commissioner abrogated this condition. The interest on the bank's mortgage at 4% totaled $120. Taxes, insurance and other carrying charges amounted to about $100. Upkeep of the property reached $80. The $140 remaining was applicable to secured and unsecured debts. The creditor holding the chattel mortgage received from this $140 carrying charges on the balance and a small amount on the principal to compensate for depreciation of the live stock. In his opinion the court stated:

'Even if other creditors receive little or nothing during the three year period [the debtors are] entitled under the present circumstances, while the present economic situation continues, to have a chance to rehabilitate [themselves.]' "

The report of the case of *In re Knapp,* in paragraph 51851 of the Bankruptcy Law Service of the Commerce Clearing House in 1939, before Judge Cooper of the District Court of New York, reads:

"This was a motion by the land contract vendor to dismiss the proceeding on the ground that the petition was not filed in good faith and that the debtor's finan-

cial rehabilitation could not be accomplished under the proceedings.

The debtor in 1920 contracted to buy the farm for $7,500. The total cash paid on the purchase following 1931 was $400. The contract vendor paid the taxes on the farm nearly every year; in 1936 he paid $22.00 insurance and he advanced $1,131.14 for living expenses and farm operations. The accumulated interest on the land contract amounted to $2,390. Approximately $6,246 was due the vendor when the debtor filed his petition.

The bankrupt's non-exempt property was appraised $2,500 (the assessed valuation of the farm accounted for $1,800 of this total). The debtor's principal income was derived from the dairy business; he and his wife owned 16 cows.

The conciliator fixed $300.00 per year as the sum for the debtor to pay under the three year provision of Section 75 (s).

The court expressed grave doubt as to the debtor's ability to rehabilitate himself; however, under certain modifications of the conciliation commissioner's plan, the court decreed that the debtor be given an opportunity under the Act. The court said:

'The motion is denied if the debtor shall be required to pay to the contract vendor, interest at 5% on the $2,500 appraisal value, either out of the $300 rental or otherwise and to pay the contract vendor $50.00 to be paid on January 6th, 1940 and annually thereafter during the three years, beyond the rental, to apply on the principal of the debt payable.'"

In the early uncertain days of the adjudication of Section 75 when the members of both the bench and of the bar were developing a form of procedure for the new legislation, Judge Dewey of the District Court of Iowa, in the Matter of *Wilkin*, 8 Fed. Supp. 222 said:

"Prior to the creditors' meeting the debtor filed a proposal for composition and extension, and the creditors present stated that they would refuse the offer

and demanded that the case be dismissed. This was overruled by the commissioner, and he was clearly right. The purpose of the Act is to endeavor to obtain a composition or settlement between debtor and creditor, if possible, and this may not be accomplished at the first meeting. The commissioner should, if reasonable request is made by either the debtor or the creditors, continue the first meeting and permit the parties to endeavor to work out a conciliation agreement, if possible. This procedure can only be continued for a reasonable time.

Rule L, subd. 4, of the amendment to the General Orders in Bankruptcy, promulgated by the Supreme Court on April 17, 1933 (11 U. S. C. A. Section 53), with reference to proceedings under Section 75 of the Act, is somewhat analogous, although it refers only to a confirmation. It provides:

'4. If the farmer has not applied for confirmation within such reasonable time as has been finally fixed therefor, which shall be not later than three months after the date of the first meeting the conciliation commissioner shall, unless the judge for cause shown shall have permitted a further extension, forthwith report the facts to the judge, who shall thereupon dismiss the proceedings.'

The above objections having been overruled at said meeting, the debtor file an amendment to this petition asking for the appraisal of his property under the provisions of section 75 (s) of the Act, 11 U. S. C. A., Section 203 (s). Thereupon the commissioner called for designations of appraisers as provided by the rules of this court. The creditors objected to the designation and appointment of appraisers, urging that the conditions precedent to the operations of subdivision (s) of section 75 of the Act had not been complied with. This objection was also overruled, and the debtor and some of the creditors designated appraisers.

This presents for ruling the most important question with reference to procedure under subdivision (s)

of section 75 of the Act [11 U. S. C. A., Section 203 (s)]. Judges of federal courts and referees have given considerable time and study to the question. It was my first conclusion, and the supplemental rules promulgated by this court on July 7, 1934, indicate that the first sentence of the Frazier-Lemke Act [section 75 (s)] gave to a debtor a discretion and that he might still have the benefits, if any, of subdivision (s), although not electing to file a petition asking to be adjudged a bankrupt. There are reasons why this should be the interpretation, if possible. The intention of the framers of section 75 of the Act evidenced a desire to keep down the expenses and the necessity for immediate relief, if possible, is apparent. In so deciding, however, I was required to disregard the first sentence of subdivision (s), and I am now convinced that this cannot be done; but this sentence must be read in connection with the other provisions of the Act. In thus reading it I am now firmly of the opinion that proceedings under section 75 (s) of the Act cannot be maintained except and until an adjudication in bankruptcy. Even without this ruling this court had long been of the opinion that none of the provisions of section 75 (s) of the Act could be available to a debtor until all the provisions of the Act with reference to composition and extension (section 75 (a-r), 11 U. S. C. A., Section 203 (a-r) had been exhausted and that such exhaustion of those remedies must be a condition precedent to the appointment of appraisers under subdivision (s)."

## CONCLUSION.

The conclusion of the whole matter in this case, which is typical of thousands of others now pending, would seem to be that a due regard for the powers of the Congress as expressed in Section 75 of the Bankruptcy Act requires that the procedure be followed as laid out in the Act. Any attempt to tone down its provisions in consideration of the objections of creditors, secured or unsecured, by deviation from the law as written is of the nature of a trespass upon

the legislative powers of the Federal government delegated exclusively to its legislative department by the Constitution.

Respectfully submitted,

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p. p. 3.

# SUPREME COURT OF THE UNITED STATES.

No. 33.—October Term, 1939.

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| John Hancock Mutual Life Insurance Company, Petitioner, vs. Benno Bartels. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit. |

[December 4, 1939.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

In this proceeding brought by a farmer under Section 75 of the Bankruptcy Act, the District Court dismissed the debtor's petition. The Circuit Court of Appeals held that this action was contrary to the requirements of the statute and directed the proceeding to be reinstated. 100 F. (2d) 813. Because of conflict in the rulings of the Court of Appeals of the Fifth Circuit, due to the differing views of the judges composing the court in the cases cited,[1] and because of the importance of the question, we granted certiorari. April 24, 1939.

Respondent Bartels presented his petition to the District Court on December 2, 1937, asking that he be afforded an opportunity to effect a composition or extension of time to pay his debts under Section 75. The court referred the matter to a conciliation commissioner, directing the debtor to appear before the commissioner and to submit to such orders as might be made in proceedings under that section. A meeting of the creditors was held on December 21, 1937, at which the debtor was present and was examined. It appeared that his debts amounted to about $10,000 of which about $8,000 (including interest and attorney's fees) was owing to the John Hancock Mutual Life Insurance Company and was secured by a lien upon his home. As the debtor was unable to obtain an agreement with a majority of his creditors in number and amount, he notified the commissioner that he would apply to be adjudged a bankrupt under subsection (s) of Section 75. That application was filed on January 10, 1938. The debtor asked that "his prop-

[1] See Baxter v. Savings Bank of Utica, 92 F. (2d) 404; In re Henderson, 100 F. (2d) 820; Wilson v. Alliance Life Insurance Co., 102 F. (2d) 365.

erty be appraised", that "his exemption be set aside to him" and that he be permitted "to retain possession of his property under the supervision of the court". On the same day, the District Judge entered an order adjudging the debtor a bankrupt and requiring further proceedings before the commissioner acting as referee under subsection (s).

On March 23, 1938, the John Hancock Company moved to set aside the adjudication and to dismiss the debtor's petition on the ground that the debtor was not entitled to avail himself of the provisions of subsection (s); that he had not presented any feasible plan for a composition and extension of his debts, and that his petition "was not filed in good faith" or "with any hope or expectation of working out his debts and paying up his delinquencies but apparently for the sole purpose of hindering and delaying his creditors". The Company also alleged that at the fair market value of the real property held by it as security there was no equity for the debtor and that the Company would suffer irreparable loss unless the adjudication was set aside and the proceeding dismissed. The debtor denied these allegations and alleged that the land on which the Company had a lien was worth unimproved more than $7,000 and that the improvements were worth $6,000 and that he thus had a large equity which would be lost to him unless he obtained the benefits sought under the applicable law.

At the hearing of the motion on April 5, 1938, the court received the evidence previously taken before the commissioner and additional testimony. Thereupon the motion was granted. The District Judge said in his opinion that the debtor had not made any proposal which could be construed as a "good faith offer for an extension or composition" and hence the debtor was not entitled to be adjudged a bankrupt under subsection (s). The District Judge observed that the evidence was conflicting as to the value of the land (100 acres); that, separating the land from its improvements, certain of the debtor's witnesses placed its value at $70 an acre and the improvements at $5,000 or $6,000, while witnesses for the creditor valued the land at about $40 an acre and the improvements at about $2,000. He thought that there was no reasonable probability of the property being sold for enough to give any substantial equity to the debtor and accordingly found that there was no reasonable probability of the debtor's fi-

nancial rehabilitation. In that view the District Judge concluded "that the order adjudicating the debtor a bankrupt under subsection (s) was improperly entered and should be set aside and the cause dismissed".

We think that the District Judge failed to follow the mandate of the statute and that the Circuit Court of Appeals was right in reversing the judgment and ordering the proceeding to be reinstated.

Subsection (s) of Section 75 as amended by the Act of August 28, 1935,[2] prescribes a definite course of procedure. That subsection applies explicitly to a case of a farmer who has failed to obtain the acceptance of a majority in number and amonnt of all creditors whose claims are affected by a proposal for a composition or an extension of time to pay his debts. That was Bartels' situation. Provisions for proceedings by a farmer to obtain a composition or extension, when he is insolvent or unable to pay his debts as they mature, are found in subsections (a) to (r) of Section 75. For that relief Bartels had presented his petition under subsection (c) and the District Court had approved the petition as properly filed. According to the report of the conciliation commissioner, to whom the matter was referred according to the statute, Bartels had appeared at the meeting of the creditors and had submitted to a detailed examination concerning his financial condition. He proposed to sell certain property and to apply the proceeds to the payment in part of the amounts due to the John Hancock Company, the secured creditor. He succeeded in obtaining an agreement with certain unsecured creditors for an extension but the secured creditor refused consent, as Bartels could not meet all his arrears. Bartels was thus precisely in the condition prescribed in subsection (s).

The subsections of Section 75 which regulate the procedure in relation to the effort of a farmer-debtor to obtain a composition or extension contain no provision for a dismissal because of the absence of a reasonable probability of the financial rehabilitation of the debtor.[3] Nor is there anything in these subsections which warrants the imputation of lack of good faith to a farmer-debtor be-

[2] 49 Stat. 943; Wright v. Vinton Branch, 300 U. S. 440.

[3] What is said upon this point in Note 6 in Wright v. Vinton Branch, 300 U. S. 440, 462, was not essential to the opinion in that case and is not supported by the terms of the statute.

cause of that plight. The plain purpose of Section 75 was to afford relief to such debtors who found themselves in economic distress however severe, by giving them the chance to seek an agreement with their creditors (subsections (a) to (r)) and, failing this, to ask for the other relief afforded by subsection (s). The farmer-debtor may offer to pay what he can, as Bartels did, and he is not to be charged with bad faith in taking the course for which the statute expressly provides. The only reference in Section 75 to good faith is found in subsection (i), which relates solely to the confirmation of proposals for composition or extension when the court must be satisfied that the offer and its acceptance are in good faith and have not been made or procured by forbidden means or except as provided in the statute. That provision manifestly hits at secret advantages to favored creditors or other improper or fraudulent conduct.

As Bartels' case thus fell within subsection (s), he amended his petition and asked to be adjudicated a bankrupt as that subsection permits. He was so adjudicated. Bartels then asked, also as provided in subsection (s), that his property be appraised, that his exemptions be set aside to him as provided by state law, and that he be allowed to retain possession of his property under the supervision of the court, that is, subject to such orders as the court might make in accordance with the statute. The court failed to take that action. Instead of having the property appraised, the court received conflicting testimony as to value, discussed the chances of the debtor's rehabilitation and dismissed the petition and all proceedings thereunder.

The procedure under subsection (s) is intended to protect all interests. It provides, in paragraph (1), that after the value of the debtor's property has been fixed by the prescribed appraisal, the referee shall set aside the debtor's unencumbered exemptions and direct his retention of possession of the rest of his property subject to all liens and to the court's supervision and control. Under paragraph (2), if there has been compliance with the statutory conditions, the court is directed to stay all proceedings against the debtor or his property for a period of three years, and during that time the debtor may retain possession of all or part of his property subject to the court's control, provided he pays a reasonable rental semi-annually. That rental is to be paid into court and is to be

used first for the payment of taxes and the upkeep of the property and the remainder is to be distributed among the creditors as their interests may appear. If the court finds it necessary to protect the creditors "from loss by the estate", or "to conserve the security", the court may order any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, to be sold at public or private sale, and the court, in addition to the prescribed rental, may require payments to be made by the debtor on the principal of his debts in the manner set forth. Then it is provided, in paragraph (3), that at the end of the three-year period, or at any time before that, the debtor may pay into court the appraised value of the property of which he retains possession, "including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal", for appropriate distribution to his creditors. There is the proviso that upon the request of any creditor, or of the debtor, the court shall cause the debtor's property to be reappraised, or in its discretion set a date for hearing, and thereafter fix the value of the property in accordance with the evidence, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to his creditors. In that way, by the order of the court, the debtor may regain full possession and title of such property, the ascertained value of which has thus been devoted to the payment of his debts. There is the further proviso, for the protection of secured creditors, that upon request in writing by any secured creditor the court shall order the property upon which the secured creditor has a lien to be sold at public auction. See *Wright* v. *Vinton Branch*, *supra*, pp. 458-461. The debtor is to have ninety days to redeem the property so sold by paying the amount for which it was sold, with interest, into court, and he may apply for his discharge as provided in the Act. If, however, the debtor at any time fails to comply with the provisions of the section or with any orders of the court made thereunder, or is unable to refinance himself within three years, the court may order the appointment of a trustee and direct the property to be sold or otherwise disposed of as provided in the Act.

The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the fair application of whatever property the

debtor has to the payment of their claims, the priorities and liens of secured creditors being preserved. See *Wright* v. *Vinton Branch, supra; Adair* v. *Bank of America Association,* 303 U. S. 350, 354-357; *Wright* v. *Union Central Life Insurance Co.,* 304 U. S. 502, 516, 517.

We are not here concerned with questions which may arise in the course of the administration under the statute, but merely with the duty to follow the procedure which the statute defines and the District Court failed to observe. We hold that on his amended petition invoking subsection (s) Bartels was entitled to be adjudged a bankrupt and to have his proceeding for relief entertained and his property dealt with in accordance with that subsection.

The judgment of the Circuit Court of Appeals reversing that of the District Court and directing the proceeding to be reinstated is affirmed and the cause is remanded to the District Court with direction to proceed in conformity with this opinion.

*It is so ordered.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*